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In re: **Cox Radio, Inc. and SummitMedia, LLC,**
Applications for Assignment of Licenses

File No. BAL-20130212ABK
File No. BALH-20130212ABL
File No. BALH-20130212ABM
File No. BALH-20130212ABN
File No. BAL-20130212ABO
File No. BALH-20130212ABP
File No. BALH-20130212ABQ
File No. BALH-20130212ABR
File No. BALH-20130212ABS
File No. BALH-20130212ABT
File No. BALH-20130212ABU
File No. BAL-20130212ABV
File No. BALH-20130212ABW
File No. BAL-20130212ABX
File No. BALH-20130212ABY
File No. BALH-20130212ABZ
File No. BALH-20130212ACA

File No. BALH-20130212ACB
File No. BALH-20130212ACC
File No. BALH-20130212ACD
File No. BALH-20130212ACE
File No. BAL-20130212ACF
File No. BAL-20130212ACG

**Cox Radio, Inc. and Connoisseur Media
Licenses, LLC, Applications for Assignment of
Licenses**

File No. BALH-20130212ACH
File No. BALH-20130212ACI
File No. BALH-20130212ACJ

Petition to Deny

Dear Counsel:

We have before us applications (“Applications”) to assign the licenses of 26 radio stations currently licensed to Cox Radio, Inc. (“Cox”) to SummitMedia, LLC (“Summit”) and Connoisseur Media Licenses, LLC (“Connoisseur”) (collectively, “Applicants”).¹ We also have before us a Petition to Deny (“Petition”) these applications filed by Citizens for Equity in Taxation (“CET”) on March 21, 2013.² For the reasons discussed below, we deny the Petition and grant the Applications.

Procedural Issue. Section 309(d)(1) of the Act restricts to “parties in interest” the universe of entities that may file a petition to deny a proposed assignment.³ Under this provision of the Act, a party in interest must essentially meet the same requirements as those required for standing to appeal a Commission decision to a federal court.⁴ Thus, an entity claiming standing must allege and prove three elements: (1) personal injury; (2) the injury is “fairly traceable” to the challenged action; and (3) there is a substantial likelihood that the relief requested will redress the injury claimed.⁵ With respect to the

¹ Cox proposes to assign the licenses for the following 23 radio stations to Summit: WZZK-FM, WAGG(AM), WENN(AM), Birmingham, Alabama; WBHJ(FM), Midfield, Alabama; WBHK(FM), Warrior, Alabama; WBPT(FM), Homewood, Alabama; WZNN(FM), Gardendale, Alabama; WHZT(FM), Williamston, South Carolina; WJMZ-FM, Anderson, South Carolina; KCCN-FM, KINE-FM and KRTR(AM), Honolulu, Hawaii; KKNE(AM), Waipahu, Hawaii; KPHW(FM), Kaneohe, Hawaii; KRTR-FM, Kailua, Hawaii; WQNU(FM), Lyndon, Kentucky; WRKA(FM), Louisville, Kentucky; WVEZ(FM), St. Matthews, Kentucky; WSFR(FM), Corydon, Indiana; WHTI(FM), Lakeside, Virginia; WKHK(FM), Colonial Heights, Virginia; WKLR(FM), Fort Lee, Virginia; and WURV(FM), Richmond, Virginia. Cox proposes to assign the licenses for the following three radio stations to Connoisseur: WEZN-FM, Bridgeport, Connecticut; WFOX(FM), Norwalk, Connecticut; and WPLR(FM), New Haven, Connecticut.

² Applicants filed a Joint Opposition (“Opposition”) on April 1, 2013. CET filed a Reply to Joint Opposition (“Reply”) on April 8, 2013.

³ 47 U.S.C. § 309(d)(1). See also 47 C.F.R. § 73.3584(a); *MCI Communications Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 7790, 7794 ¶ 11 (1997) (“*MCI*”).

⁴ See 47 U.S.C. § 402(b). See also *MCI*, 12 FCC Rcd at 7794 ¶ 11; *Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, Memorandum Opinion and Order, 82 F.C.C.2d 89, 95-96 ¶¶ 13-20 (1980) (“*Standing Order*”); *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994, 1000 n.8 (1966).

⁵ See, e.g., *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *MCI*, 12 FCC Rcd at 7794; *Conn-2 RSA Partnership*, Memorandum Opinion and Order, 9 FCC Rcd 3295, 3297 ¶ 7 (1994). In an assignment of license proceeding, petitioner must allege and prove: (1) it has suffered or will suffer injury-in-fact; (2) there is a causal

three-pronged standing requirement, traditionally, in a sales context, injury has been asserted in three ways: (1) petitioner is a competitor in the market suffering signal interference; (2) petitioner is a competitor in the market suffering economic harm; or (3) petitioner is a resident of the station's service area.⁶

In its Petition, CET asserts that it is a "party in interest" because it is "acting in the capacity of a 'private attorney general' on behalf of ... taxpaying US citizens."⁷ CET argues that "this transaction will produce harm to all individual taxpayers" because individual taxpayers will have to pay more taxes to make up for the taxes Cox will avoid by structuring these transactions as part of a like-kind exchange in order to defer the recognition of capital gains.⁸ However, as Applicants point out, it is well established that parties cannot attain standing solely based on allegations that they will pay higher taxes based on the outcome of a particular case.⁹ In its Reply, CET appears to acknowledge this.¹⁰ Therein, CET seeks to ground its claim to standing on the fact that certain new members – acquired after CET filed the Petition – are residents of the communities served by the stations being assigned.¹¹ However, CET's attempt to cure the procedural defect in its Petition is untimely.¹² Accordingly, we conclude that CET does not have standing to file a petition to deny the Applications. Nonetheless, we will treat the Petition as an informal objection and consider CET's arguments herein.¹³

Substantive Issues. CET is an organization focused on "promot[ing] equitable and limited taxation of citizens and reform of corporate tax loopholes that do not benefit individual citizens."¹⁴ CET speculates that the Applications will be part of a like-kind exchange and, therefore, that their grant will offer tax avoidance benefits to Cox.¹⁵ CET urges the Commission to determine, as a policy matter, whether like-kind exchanges are in the public interest. CET argues that such exchanges are not because they offer a competitive advantage to the parties involved and have "the potential by their very nature" to facilitate media consolidation and negatively impact diversity.¹⁶ CET thus asks the Commission to require applicants seeking approval for transactions that involve like-kind exchanges to make "a showing of

link between the proposed assignment and the injury-in-fact; and (3) redressability, meaning that not granting the assignment would remedy the injury-in-fact.

⁶ See *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994 (1966); *FCC v. Sanders Brothers Radio Station*, 309 US 470 (1940).

⁷ Petition at 5.

⁸ *Id.* at 6.

⁹ Opposition at 3, citing *Frothingham v. Mellon*, 262 U.S. 447, 487-88 (1923).

¹⁰ Reply at 3.

¹¹ *Id.*

¹² See *Infinity Broadcasting Corp. of California*, Memorandum Opinion and Order, 10 FCC Rcd 9504, 9506 ¶ 10 (1995) ("*Infinity*") (petitioner who does not establish standing in its petition cannot cure the failure in its reply). Moreover, we note that, while an organization may establish standing to represent the interests of local listeners or viewers, to do so, it must provide the affidavit of one or more individuals entitled to standing indicating that the group represents local residents and that the petition is filed on their behalf. See *Standing Order*, 82 F.C.C.2d at 99 ¶ 26 (1980). See also *Infinity*, 10 FCC Rcd at 9506 ¶ 10; *Niles Broadcasting Company*, Memorandum Opinion and Order, 7 FCC Rcd 5959, 5959 ¶ 4 (1992). CET has not done so even in its Reply.

¹³ 47 C.F.R. § 73.3587.

¹⁴ Petition at 2.

¹⁵ *Id.* at 7-8. See also 26 U.S.C. § 1031 (providing that "[n]o gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment").

¹⁶ Petition at 14; Reply at 4-7.

public benefit over and above the showing required in a fully taxable transaction.”¹⁷ CET requests that the Commission deny the Applications until such time as the Applicants demonstrate that these transactions – “and in particular the use of the like-kind exchange” – are in the public interest.¹⁸

Applicants oppose this, stating that the Applications “include all the information required by the Commission’s rules, forms, and instructions” and noting that CET does not allege that the Applications fail to comply with the Commission’s media ownership or any other rules.¹⁹ Applicants state that the tax treatment of the transactions is beyond the Commission’s authority and is not an appropriate issue for consideration in this proceeding.²⁰ We agree. As Applicants note,²¹ Section 1031 of the Internal Revenue Code represents tax policy enacted by Congress. Moreover, the Internal Revenue Service expressly has approved the use of like-kind exchanges in transactions involving broadcast properties.²² In any event, the Commission has not previously found the fact that a transaction involved a like-kind exchange to be of concern.²³ Accordingly, any change in the Commission’s treatment of transactions involving like-kind exchanges would involve a change in Commission policy. It has “long been Commission practice to make decisions that alter fundamental components of broadly applicable regulatory schemes in the context of rule making proceedings, not adjudications.”²⁴ Finally, we note that CET raises only general concerns that are not specific to this transaction. These concerns are insufficient to justify denial of the specific applications involved.²⁵

Conclusion/Actions. Based on the evidence before us, we find no substantial and material questions of fact that warrant further inquiry. We also conclude that the Applicants are fully qualified and that grant of these applications will serve the public interest, convenience, and necessity. Accordingly, IT IS ORDERED that the Petition to Deny filed by Citizens for Equity in Taxation on March 21, 2013, IS DISMISSED, and when treated as an informal objection IS DENIED.

IT IS FURTHER ORDERED that the applications to assign the licenses of WZZK-FM, WAGG(AM), WENN(AM), Birmingham, Alabama (File Nos. BALH-20130212ABQ, BAL-20130212ABK, and BAL-20130212ABAO, respectively); WBHJ(FM), Midfield, Alabama (File No.

¹⁷ Petition at 14; Reply at 7.

¹⁸ Petition at 8.

¹⁹ Opposition at 5.

²⁰ *Id.* at 4.

²¹ *Id.* at 5.

²² Opposition at 5, citing *Tax Treatment of the Sale or Exchange of Television Stations*, Internal Revenue Service Revenue Ruling, 85-135, 59 RR 2d 405 (rel. Sept. 3, 1985).

²³ See, e.g., *Media General Communications, Inc. and MG Broadcasting, LLC, as E.A.T.*, Memorandum Opinion and Order, 21 FCC Rcd 7669 (2006); *Infinity Holdings Corp. of Orlando*, Opinion, 11 FCC Rcd 17813 (1996). Even CET concedes that “the Commission has in the past permitted assignment applications to go forward where a ... like-kind exchange was contemplated as part of the transaction.” Reply at 7.

²⁴ See, e.g., *Sunburst Media L.P.*, Memorandum Opinion and Order, 17 FCC Rcd 1366, 1368 ¶ 6 (2002). See also *Great Empire Broadcasting, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 11145, 11148 ¶ 8 (1999) (stating it is generally inappropriate to address arguments for a change in rules in an adjudicatory proceeding “where third parties, including those with substantial stakes in the outcome, have had no opportunity to participate, and in which we, as a result, have not had the benefit of a full and well-counseled record” and citing *Capital Cities/ABC, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 5841, 5888 ¶ 87(1996)); *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1983) (“rulemaking is generally better, fairer, and more effective method of implementing a new industry wide policy than the uneven application of conditions in isolated [adjudicatory] proceedings”).

²⁵ See, e.g., *Marnie K. Sarver, Esq.*, Letter, 28 FCC Rcd 1009, 1010-11 (MB 2013).

BALH-20130212ABL); WBHK(FM), Warrior, Alabama (File No. BALH-20130212ABM); WBPT(FM), Homewood, Alabama (File No. BALH-20130212ABN); WZNN(FM), Gardendale, Alabama (File No. BALH-20130212ABP); WHZT(FM), Williamston, South Carolina (File No. BALH-20130212ABR); WJMZ-FM, Anderson, South Carolina (File No. BALH-20130212ABS); KCCN-FM, KINE-FM and KRTR(AM), Honolulu, Hawaii (File Nos. BALH-20130212ABT, BALH-20130212ABU, and BAL-20130212ABX, respectively); KKNE(AM), Waipahu, Hawaii (File No. BAL-20130212ABV); KPHW(FM), Kaneohe, Hawaii (File No. BALH-20130212ABW); KRTR-FM, Kailua, Hawaii (File No. BALH-20130212ABY); WQNU(FM), Lyndon, Kentucky (File No. BALH-20130212ABZ); WRKA(FM), Louisville, Kentucky (File No. BALH-20130212ACA); WVEZ(FM), St. Matthews, Kentucky (File No. BALH-20130212ACB); WSFR(FM), Corydon, Indiana (File No. BALH-20130212ACC); WHTI(FM), Lakeside, Virginia (File No. BALH-20130212ACD); WKHK(FM), Colonial Heights, Virginia (File No. BALH-20130212ACE); WKLR(FM), Fort Lee, Virginia (File No. BALH-20130212ACF); and WURV(FM), Richmond, Virginia (File No. BALH-20130212ACG), from Cox Radio, Inc. to SummitMedia LLC ARE GRANTED.

IT IS FURTHER ORDERED that the applications to assign the licenses of WEZN-FM, Bridgeport, Connecticut (File No. BALH-20130212ACH); WFOX(FM), Norwalk, Connecticut (File No. BALH-20130212ACI); and WPLR(FM), New Haven, Connecticut (File No. BALH-20130212ACJ), from Cox Radio, Inc. to Connoisseur Media Licenses LLC ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau